

Islamic Fiqh (Law) and the Neglected Empirical Foundation*

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I. Introduction

Muslims believe that Islam is a comprehensive guidance for life in this world. Based on the Qur'an and Sunnah,¹ Muslims have the guidance to address the problems encountered in human life and live a balanced and successful life. For more than a millennium since the death of the Prophet, the Islamic civilization was in the driver seat of the world. However, gradually decadence crept in and now the Muslim societies are virtually dysfunctional and, due to internal as well as external factors, unable to solve most of their problems on their own and also unable to even compete with the developed world.

Today, Muslims have a lot of fond memories of the glorious past and a vast body of Islamic legal knowledge and codes that is now asynchronous with the realities of our contemporary time. Even though it is claimed that Islam is for justice, and it is true, many Muslims in their own societies are being victims of the burden of legalistic injustice and insensitivity in the name of Islam. Under Hudood Law in Pakistan, which was introduced by a military junta, many victims of rape are languishing in jail for the alleged crime of adultery. Lives of so many Muslim women have been almost instantly devastated due to the traditional divorce laws or codes. Despite the provision of *Mahr* (marriage gift), women hardly gain any economic security through marriage, a rude reality they wake up to when they encounter divorce. It is claimed that interest is prohibited (because *riba* is prohibited and it covers interest), and therefore, Islamic economy and finance must be interest-free. Why then the products and services designed and offered so far by the Islamic financial institutions merely mimic or shadow the conventional financial institutions?²

Why is this gap between the existing Islamic laws and the reality on the ground in terms of solving problems and upholding the Islamic principles of justice and balance? Why Islamic laws, as enunciated by Muslim jurists, which are often claimed to be based on guidance from God *for all time*, constantly require invoking "the principle of *darurah* (necessity)" to expediently reinterpret or readjust for what is presented or claimed as the norm? Why many Muslim women are revolting against some key provisions in the Classical laws, and either turning toward secular laws or challenging the traditional Islamic establishments to claim justice and seek a proper and dynamic implementation of Islam? Why Muslims are seeking greater freedom in their own societies, when Islam is claimed to be the vanguard of human dignity and freedom? Why the Muslim societies are encumbered with the problem of widespread poverty and destitution, outdated education, and technological backwardness?

An important factor to help understand these issues is that the Islamic law or *fiqh* lacks a systematic empirical foundation. Lest it is misunderstood, I am not using the term empirical in the narrow sense of empiricism ("the practice of relying on observation and experiment especially in the natural sciences"), where being empirical means "originating in observation or experience" or "relying on experience or observation alone." The sense in which "empirical" is used here is discussed later in this essay.

However, a pertinent observation about the corpus of Islamic laws is that it is text- or book-oriented, not life-oriented. Khaled Abou El Fadl uses the term "text-centered."³ Even

¹ Literally, it means "trodden path". In Islam the sunnah of the Prophet means "the way of the prophet".

² Raquibuz Zaman and Hormoz Movassaghi. "[Interest-free Islamic Banking: Ideals and Reality](#)," *The International Journal of Finance*, Vol. 14 No 4, 2002, pp. 2428-2443.

³ Khaled Abou El Fadl. *The Place of Tolerance in Islam* [Oxford University Press, 2002], p. 10.

though he uses it in the context of fundamentalism and extremism, such text-orientation is a hallmark of Islamic law in general. Mahmud El Gamal, the Chair and Professor of Islamic Economics, Finance and Management at Rice University and a scholar/expert from the field of Islamic economics and finance aptly articulates how through *ijtihad* the dynamism of Islam is to be ensured.

"It must be understood that when we claim that Islam has a satisfactory solution for every problem emerging in any situation in all times to come, we do not mean that the Holy Quran and Sunnah of the Holy Prophet or the rulings of Islamic scholars provide a specific answer to each and every minute detail of our socioeconomic life. What we mean is that the Holy Quran and the Holy Sunnah of the Prophet have laid down the broad principles in the light of which the scholars of every time have deduced specific answers to the new situations arising in their age. Therefore, in order to reach a definite answer about a new situation the scholars of Shariah have to play a very important role. They have to analyze every question in light of the principles laid down by the Holy Quran and Sunnah as well as in the light of the standards set by earlier jurists enumerated in the books of Islamic jurisprudence. This exercise is called *Istinbat* or *Ijtihad*... [T]he ongoing process of *Istinbat* keeps injecting new ideas, concepts and rulings into the heritage of Islamic jurisprudence..."⁴

However, all such juristic and scholarly analyses are to be guided primarily by the principles laid out by the Qur'an (a text – rather revealed text), Sunnah (as ascertained by the numerous hadith collections of various stature – again texts/books) and the books of Islamic jurisprudence (even more books/texts representing various schools, often in disagreement with each other – and, yes, more texts/books.) Noticeably, there is not even a hint of any research based on the real world outside the texts or books in "deducing" specific answer. There is also no hint of any role for any inductive approach, studies or research. It is all texts/books, and deductions.

Such text-orientation is also reinforced by the archaic Islamic education. The following comments have been made by one of the most well known Muslim intellectuals in the West, Tariq Ramadan, in the context of Islamic education in the West. The condition of Islamic education in the Muslim world is much worse.

[I]n this education the failings against which the Islamic message has warned us and to which we have ...: the reduction of spirituality to ritual technicalities, and the adoption of a dualistic and Manichean approach based on 'us' as opposed to 'them.' This extends over to the life of the Prophet (in which one have hoped for a human approach), which is reduced to a series of dates and events without real substance: one would have liked the young to love 'model,' but he has been almost completely dehumanized by the content of the teaching.

The educational methods are not much better. While the public school system teaches children to express themselves, give their opinions, and articulate their doubts and hopes, the exact opposite is found in some mosques and Islamic organizations. Here, one must be quiet and listen: there is no room for discussion, exchange or debate, an unhealthy schizophrenia, in which they learn to express themselves on every subject with 'non-Muslims' and become dumb (by giving the appearance of 'religiously' respecting everything they are told) when it comes to speaking about Islam or interacting with their religious teachers.

⁴ Mahmud EL-GAMAL. "[An Economic Explication of the Prohibition of Riba in Classical Islamic Jurisprudence](#)," *Proceedings of the Third Harvard University Forum on Islamic Finance*, Cambridge: Center for Middle Eastern Studies, Harvard University, 2000, pp. 31-44; online. p. 7.

They play the game of an education that has in fact lost its way. If we consider what is usually offered today to generations of young Muslims in the West, we become convinced that what is called 'education' (which should be the passing on of knowledge and of knowing how to be) is in fact an ill-administered 'instruction,' simply a handling on of knowledge based on principles, rules, obligations, and prohibitions, often presented in a cold, rigid, and austere manner, without soul or humanity."⁵

To make the Islamic guidance relevant and effective once again, solutions require better understanding of the problems, based on life-oriented education and empirical research. In this essay, several problematic areas are explored for illustration, a case is made for the need for enhancing Islamic *Fiqh* with a life-oriented, empirical foundation and some pertinent suggestions are also made.

II. Formulation of Islamic Laws: The Text-Orientation

Islam is more than laws, and in any functioning society, quite naturally, there should and would be development of laws, codes and standards for stability and structure. However, contrary to the Islamic principles and vision, over time legalism has overwhelmed the Muslim societies. That's why whenever the call for introducing *Shariah* is made and it is actually implemented (as it happened in several Muslim-majority countries⁶ in the twentieth century), often it basically amounts to a few harsh laws and punishments under authoritarian regimes, without any reference to Islamic values and principles.

Text-centeredness or –orientation has not only been greatly responsible for the loss of dynamism of Islam and its laws, but also non-Muslims studying Islam have been vulnerable to misunderstanding and misinterpretation of Islam.

"By approaching Islamic law reductively as a text-based tradition, colonialists could attempt to 'understand' the Muslim and Islamic experience by mere reference to text, while ignoring the significance of context and contingency that is often taken into account in working rule of law systems."⁷

Many colonialists had their prejudices, but even a Muslim can't escape the impression that traditional Islam is quite reductively legalistic, and encapsulated in layers of primary, secondary and tertiary texts, often disconnected with the realities of life.

The edifice of Islamic *fiqh* (laws) is primarily text-oriented. The first and primary foundation of Islamic *fiqh* is the Qur'an. As a revealed text, if anything is found in the Qur'an in support of or as guidance for something, it supersedes all other sources. Muslims regard the Qur'an as the infallible, revealed text from God and there is virtually no dispute among Muslims about the Qur'an. The next source of Islamic *fiqh* is Sunnah, consisting of sayings and practices of the Prophet, as preserved through Hadith. In most cases, the Qur'an only lays out the principles or directives without defining or details. Muslim jurists turn to Hadith for both definitions and details. There is controversy about

⁵ Tariq Ramadan. *Western Muslims and The Future of Islam* [Oxford University Press, 2004], pp. 127-128.

⁶ In keeping with the pluralistic norm and heritage of Islam, as exemplified in the Charter of Madinah under the Prophet, instead of identifying a country as a "Muslim country", we should prefer "Muslim-majority country."

⁷ Anver Emon. "Islamic Law and the Canadian Mosaic Politics, Jurisprudence, and Multicultural Accommodation" *Singapore Journal of Legal Studies*, April 25, 2006; online draft version at this [link](#).

Hadith, even among Muslims. While the majority of Muslim scholars insist that if there is any specific information in a Hadith, especially *sahih* (authentic) hadith, then its commandment or directive is binding, it is important to note that Muslim jurists themselves also generally acknowledge that Hadith (*sahih* or otherwise) yields only **speculative** or **probabilistic** knowledge.⁸ There are a number of hadith collections that are generally regarded as authentic or relatively more authentic. Six primary ones are known as *Sihah Sitta*. Muslim scholars and jurists turn to these and other hadith collections for determining what is obligatory, permissible, disliked and prohibited.

The third source of Islamic *fiqh* is *ijma* (consensus). Essentially, it is an integrative source in the sense that if there is an *ijma* on an issue, it is regarded as Islamically authoritative, binding and incontestable. Unfortunately, this is a seriously overused and misused concept and tool, because there is no consensus on even the definition of *ijma*. Indeed, beyond some of the broad principles or dogmas and some basic rituals, there is hardly anything on which there is *ijma*.⁹ Also, it lacks functionality in the contemporary world, because there is no way to achieve consensus in a strict, classical sense. However, regardless of the definition, since in ascertaining *ijma*, the jurists still turn to the primary textual sources, the Qur'an and Hadith, even *ijma* is text-oriented.

The last source of Islamic *fiqh* is *qiyas* (analogical deductions or reasoning). *Qiyas* is an application of known laws or codes to new situations.¹⁰ "The function of *qiyas* is to discover the cause or *illah* of the revealed law so as to extend it to similar cases. Wine drinking, for example, is prohibited by explicit text. The cause for the prohibition is the intoxicating effect, hence in whatever this cause is found prohibition will become applicable."¹¹ Since validation of *qiyas* is also primarily dependent on textual sources, as we stated earlier, the entire edifice of Islamic *fiqh* is text-oriented. *Ijtihad* (juristic interpretations) is one of the key aspects of Islamic *fiqh* that allows for re-interpretation and adjustments in light of the problems, but even such need for *ijtihad* causes the jurists and scholars to return to the texts to find better or more appropriate guidance.

An essential lacking of Islamic *fiqh* is that while Islam is to guide its adherents to find solutions to problems, there is no recognition of the need to research, study and understand the nature and scope of the problems at all, as if the problem is already known and adequately understood. Empirical research is not a built-in process of education and experience of the Muslim jurists and scholars in general. Just as research or empirical works to know about a problem before formulating or enacting a law is virtually absent in this context, there is also no ex-post research or empirical work to determine the effects and consequences of particular formulations and enactment of laws.

To illustrate the main theme of this essay, we discuss several problematic areas, where the Classical or traditional laws (as in the books or texts) have now become asynchronous with the pristine Islamic values and principles that do envision justice and balance in approaching the issues of life and guiding people in finding solutions to their problems.

⁸ Mohammad Omar Farooq_1. "[Islamic Law and the Use and Abuse of Hadith](#)" [unpublished; June 2006].

⁹ Mohammad Omar Farooq_2. "[The Doctrine of Ijma': Is there a consensus](#)," [Unpublished; June 2006].

¹⁰ Mohammad Omar Farooq_3. "[Qiyas \(Analogical Reasoning\) and Some Problematic Issues in Islamic Laws](#)," [unpublished; June 2006].

¹¹ Muhammad Muslehuddin. *Philosophy of Islamic Law and Orientalists* [Kazi Publications, 1985], p. 135.

The traditional institutions of higher Islamic learning do not have any kind of social studies or research as a component of the overall education and curriculum. Even modern educated Muslims, who take Islam seriously, rarely take interest in empirical social research. Thus, it is no wonder that many Islamic laws turn out as connected with the sacred texts, but disconnected with the reality on the ground.

1. Zina (rape/Hudood law) in Pakistan

In 1979, under the military rule of late Gen. Ziaul Huq, the Pakistani government decided to implement *Shariah*, a very misunderstood, misinterpreted and misapplied concept.¹² *Hudood* is plural of *Hadd*, a few boundary limits for the lawful and unlawful from God, the violation of which incurs punishment. The *hadd* punishments are specific, fixed penalties laid down by Allah for specified transgressions or crimes. As part of that, a comprehensive *Hudood* ordinance was enacted, which included The Offence of Zina (Enforcement of *Hudood*) Ordinance, VII of 1979. Zina (adultery/fornication) is prohibited in the Qur'an and it is a punishable offence. This ordinance defined *zina* a lot more liberally, where *zina* means adultery, fornication, prostitution and rape. Thus, rape became a type of *zina*, *zina bil-jabr*.

Mixing up adultery and rape, by categorizing rape as a subcategory of *zina*, created a nightmare situation for so many women in Pakistan. Thousands of women, who claim to be victims of rape, end up being prosecuted under the laws pertaining to adultery. These laws were formulated by merely referring to the religious texts, without any pertinent research before or after the enactment. The miserable experience with the *Hudood* laws created uproar among the conscientious people, including many among those who take Islamic principles and values seriously. After enacting the law, there was no research by either the religious establishment or educational institutions to have an ex-post analysis of the impact of the laws. Traditional Muslim jurists and scholars were satisfied that the *Hudood* Ordinance was in place, and thus, God's work was being done, which must be just and decent, because it is based on the divine book or revelation. Not only they did not undertake any effort to study and be informed about the consequences of the law, but also they turned a deaf year to all protests as well as results of social/field studies that were done. It took more than 25 years on the part of Pakistani *ulama* just to acknowledge that there are serious problems with the *Hudood* Laws. For details about the background of the *Hudood* Law and its consequences, see Farooq_5.¹³

Typical Case: Mst. Sukhan

The father of Mst. Sukhan filed a complaint stating that his daughter had been abducted by three persons. At trial, all three accused of abduction were acquitted. Mst. Sukhan was convicted for Zina. 'Mst. Sukhan was initially treated as prosecution witness being the abductee. It was during the investigation that on the directions of Deputy Superintendent of Police, the investigating officer Muhammad Ibrahim arrested Mst. Sukhan on 27-12-81 as an accused person because she was involved in the case.' The Chemical Examiner's report found stains of blood and semen on the garments of the abductee. The trial court argued that since the abductee was kidnapped for three months and was not in the company of her husband, the presence of blood and semen were proof of her

¹² Mohammad Omar Farooq_4. [Shari'ah, Laws and Islam: Legalism vs. Value-orientation](#) [Unpublished; October 2006]

¹³ Mohammad Omar Farooq_5. [Rape and Hudood Ordinance: Perversion of Justice in the Name of Islam](#) [unpublished; May 2006]

guilt. The abductee, however, alleged that rape had been committed on her at the police station. On appeal the Federal Shariah Court acquitted Mst. Sukhan.¹⁴

The case of Mst. Sukhan ends on a happy note that she was acquitted. However, the issue is why did she, a victim, have to endure this to begin with. Also, not every case under the *Hudood* Law ends this way. There are thousands of women who have been victimized under this ordinance. Being acquitted is good, but not good enough in the face of years of confinement, lost social standing, and even abandonment by the family.

"Of the 7,000 women in jail around the country awaiting trial, 88 percent are accused of crimes under Hudood, according to the Lawyers for Human Rights and Legal Aid. Ninety percent of these women have no lawyer, and 50 percent do not know they are entitled to contact one. Most women accused of Hudood violations are acquitted, but lose an average of five years to confinement, and lose their reputations as well."¹⁵

Asma Jahangir and Hina Jilani's book *The Hudood Ordinance* [Sang-e-Meel Publications, 2003], based on well-documented research, is an excellent example of the kind of work the religious scholars and institutions should be capable and willing to undertake. If the religious scholars and institutions are not able to undertake such studies themselves, they should be abreast of any research or study pertaining to the laws and codes they help promulgate.

2. Triple Talaq (divorce)

Even though it is plainly contrary to the teachings of the Qur'an and the Prophetic legacy, triple talaq at one stroke is recognized by the Classical *fiqh* as valid and effective. The reason it is considered valid is because Hadrat Umar, the second caliph after the Prophet, enforced it and, it is claimed, that since other companions of the Prophet did not disagree, there is an *ijma* (consensus) on this, making it binding that the effectiveness and validity of triple talaq is recognized.¹⁶

It is important for the readers to familiarize themselves that there is really no *ijma* on this at all, and there can't be, when there is not even an agreed upon definition as to whose opinion is counted toward *ijma*.¹⁷ But to approach this exclusively from the standpoint whether there is an *ijma* or not is purely a text-oriented approach. A complementary, life-oriented approach requires that research and study be done as to what kind of experiences women undergo as a result of such triple-talaq divorces.

The reality is that, even though it is highly questionable, traditional Islamic laws have granted the right to divorce primarily to men. A husband can divorce his wife at any time, using any possible means (verbal, written, email, voice message, etc.), under any circumstances (angry, drunk or coerced) - without being required to give any

¹⁴ Asma Jahangir and Hina Jilani. *The Hudood Ordinance* [Sang-e-Meel Publications, 2003], p. 90.

¹⁵ "[Pakistani religious law challenged](#)," Christian Science Monitor, Mar 02, 2005]

¹⁶ "Nadvi opposes the view of many traditionalist scholars who claim that 'Umar's decision was unanimously agreed upon by all the *sahaba*, or companions, of the Prophet present." Yoginder Sikand. "[Triple talaq: counter-perspective](#)," July 2004.

¹⁷ See Farooq_2, *Op. Cit.*

excuse/ground/reason to anyone for divorce,¹⁸ and without any requirement of witness.¹⁹ The only limited right women have in seeking a divorce is primarily through a structured legal process, subject to many conditions and restrictions, which many women find extremely cumbersome.²⁰ The following is a case that is not that uncommon.

Typical Case: Ameena

Ameena, a young telephone operator in Delhi, came home one evening to find her husband in a clinch with another woman. Even before she could collect her wits, he turned on her and pronounced talaq thrice. Ameena's marriage of six years was over. Worse, he refused to pay her maintenance beyond the iddat period (three menstrual cycles). Today, two years later, thanks to the Muslim Women (Protection of Rights on Divorce) Act of 1986, Ameena still awaits her due from her husband.²¹

Once a triple-talaq is exercised, according to the traditional Islamic law (at least, some schools, including Hanafi), it becomes an irrevocable divorce and the divorced wife is basically on the street, unless she can find a roof on her head somewhere else. In adherence to the Qur'an and Sunnah, triple talaq at one stroke should be considered prohibited, and Muslims should seek its complete banning.

Unfortunately, there has never been any research study undertaken by the religious orthodoxy to learn about what happens to the lives of these divorced women and their

¹⁸ See the chapter on divorce in any major legal compendium, including Burhan al-Din al-Marghinani, *Al-Hidāya* (2nd ed.; London, 1870), translated by Charles Hamilton (Karachi, 1989), which is a Hanafi compendium.

¹⁹ That witness is not required according to traditional Islamic law is in direct contradiction to the Qur'an. "Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day. And for those who fear Allah, He (ever) prepares a way out." [65/al-Talaq/2]

²⁰ In early 1900, many Muslim women seeking divorce found it extremely difficult. Indeed, in some cases, the only option left to them was apostasy, in which case, according to the Hanafi law, the marriage stands annulled. This became a great tool for the Christian missionaries to entice Muslim women to get out of their divorce through conversion to Christianity. The religious establishment, lead at that time by Maulana Ashraf Ali Thanwi, was initially utterly insensitive. It is quite mind-boggling that initially the fatwa favored Muslim women's apostasy, if someone was desperate in getting divorce, than facilitating divorce as per permissibility of divorce in Islam and that Islam recognizes the reciprocity in rights regarding divorce, with only "a degree" in advantage for men.

And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. [2/al-Baqarah/228]

However, as the momentum for seeking divorce through apostasy grew to an alarming level, the religious establishment did not address the underlying injustice in traditional Islamic law of divorce. Instead, they resorted to *Talfiq* (mixing juristic positions of more than one school) and closed the door to such large-scale conversion by issuing the fatwa that conversion does not annul the marriage. Please read an illuminating research work of great historical interest: Muhammad Khalid Masud. "[Apostasy and Judicial Separation in British India](#)," in *Islamic Legal Interpretation: Muftis and Their Fatwas* (Harvard University Press, 1996) Chapter Sixteen, pp. 193-203. For a more detailed exposition of *talfiq*, see Birgit Krawietz. "Cut and Paste in Legal Rules: Designing Islamic Norms with Talfiq"? *Die Welt des Islams* [Vol. 42, Issue 1, April 2002], pp. 3-40.

²¹ Sakina Yusuf Khan. "[Divorced from Reality - Amending the Triple Talaq Law](#)," *The Times of India*, October 5, 2000.

families/children. Let alone the *ulama*, even Muslim intelligentsia is often preoccupied with polemical Islamic works, without undertaking any such research work. Whatever research work is available is usually by western scholars or secular researchers in the Muslim-majority countries. There is a new breed of Islamic feminist scholars as well as other western trained Muslim scholars who are stepping forward to make a difference to this field. However, the traditional religious institutions of higher learning still do not recognize the need to integrate research and social studies into their curriculum.

3. Inheritance (women's share)

Classical Inheritance law of Islam is fixed and rigid. The surviving family members and relatives have fixed, designated shares, determined exclusively in reference to the textual sources. There is no study or research on the impact of such laws, particularly on women, who generally constitute one of the most vulnerable segments of the society. It is all too well known that men can easily walk away from family relationships and obligations, but it is not so for women. Also, despite the idealized claims, after being divorced or widowed, except women with their own accumulated assets and resources, can't meaningfully count on anyone. More importantly, the Islamic orthodoxy does not even recognize the need or virtue of women's potential ability to be self-reliant, because it is deemed and argued that a woman will always have someone to take care of her: a father, a husband, a brother/sibling, a son/child, or the government/society. Without pertinent empirical social studies to know the nature and extent of the problem arising from the rigidity of inheritance laws, one can't even begin to appreciate the misery and vulnerability of many women, especially the ones from the poor, rural background.

The role of the jurists and scholars can't be simply to live in the realm of texts and formulate and enact laws. They also need to be conversant with the problems they try to address and the effect of the laws and codes they formulate and enact. It is not enough to claim that according to Islamic law, women are entitled to inherit and own property, receive a dower (*mahr*) at marriage, and to manage their own asset and income. However, they also need to study what happens in reality, why is there a serious gap between the laws and the reality, and how to address the gap, instead of merely formulating laws and then taking a hands-off approach, as if *God's work* has been done.

Annelies Moors and Charles Tripp's book *Women, Property and Islam: Palestinian Experiences, 1920-1990*,²² is an excellent example of a relevant empirical work, the kind of which the religious scholars and institutions should be capable and willing to undertake.

4. Early age marriage (health and other issues)

While the Classical Islamic law allows marriage of minors (even of infants), the practice was merely inherited from the prevailing customs in Arabia from the days even before the Prophet Muhammad. However, the marriage of the minor is in fundamental contradiction with the liberty and human dignity of each individual, where a person is denied his own choice as an adult about one of the foremost decisions in anyone's life. Assuming that marriage of minors is allowed, with which as a Muslim and a human being I can't reconcile, a sad reality is that Muslim jurists do not undertake any research to study the impact of early marriages on the affected women's health, sanity and other pertinent aspects. Indeed, often puberty is regarded as marriageable age.

²² Annelies Moors and Charles Tripp. *Women, Property and Islam: Palestinian Experiences, 1920-1990* [Cambridge University Press, 1996]

Just recently I met a young family in America, who came as immigrants from a Muslim-majority country in South Asia. The girl was given into marriage while she was sixteen or less, and is now not only incapable of handling the responsibility of a new born, but angry at herself and her family because of her situation. She developed schizophrenia and continues to suffer from debilitating symptoms. While this is anecdotal, such experience is not uncommon, as many girls are given into marriage at a very early age. Since the family structure of most Muslim societies is such that the bride basically moves to the groom's extended family, the emotional and other problems for them to deal with are simply enormous.

An empirical study in Iran based on 1010 women in a particular tribe found certain gynecological problems more prevalent, contributed by, among other factors, early age at marriage and childbearing.

Gynecological problems related to childbearing were studied in 1010 married women of the semi-nomadic Qashqa'i tribe. The most common problems were cystocele (56.0%), uterine prolapse (53.6%) and rectocele (40.4%). The prevalence of other problems such as cervical erosion and inflammation, urinary incontinence and dyspareunia was found to be between 24% and 40%. Early age at marriage and childbearing, high parity and poor access to medical facilities are considered to be the most important factors leading to these high prevalence rates, although the lifestyle of the women in this community could also be a major contributing factor.²³

In an empirical work on the factors affecting divorce in a traditional Muslim community in Bangladesh, it has been found that:

"The groom's and bride's low socio-economic status, illiteracy, and early age at marriage increased the odds of divorce."²⁴

Islam allows divorce, but considers it extremely undesirable. Based on that premise, divorce should be difficult. However, that is not so, as far as men's right and privilege to divorce. But even more ironic is the fact that jurists and scholars also don't like divorce, but they have no desire or urge to study what factors (social and other) contribute toward divorce and, if and how such factors can be dealt with to make marriage more harmonious or functional and how the incidence of divorce can be minimized.

Of course, any such empirical work can be countered with alternative empirical works, especially if empirical works are used to support a preconceived notion or fit already formulated hypothesis. There is also a learning curve in giving Islamic fiqh a complementary empirical foundation. However, whether there is any problem or not, or whether the problem is extensive or not, the reality is that those who formulate Islamic laws, in a text-oriented manner, can do a much better job, humanly and Islamically, if they would integrate social research programs into their education, training and praxis.

5. Birth Control (frequent pregnancy)

²³ A. Sadeghi-Hassanabadi, H. Keshavarz, E. Setoudeh-Maram and Z. Sarraf, [Prevalence of reproductive morbidity among women of the Qashqa'i tribe](#), Islamic Republic of Iran, *Eastern Mediterranean Health Journal*, Volume 4, Issue 2, 1998, Page 312-318.

²⁴ Nurul Alam, Sajal K. Saha, and Jeroen K. van Ginneken, ["Determinants of Divorce in a Traditional Muslim Community in Bangladesh"](#), *Demographic Research*, Vol. 3, Article 4, September 4, 2000.

That the Muslim world has been experiencing a population explosion is not an understatement. Several Muslim-majority countries, including Bangladesh and Pakistan, are among the countries with rather large population and poverty. These Muslim-majority countries are breeding further poverty. For the vast majority of people, the quality of life is either stagnant at a miserably low level or, with exploding population growth, deteriorating. The religious establishment generally has been against any kind of birth control policy or program. Any such policy or program is considered inconsistent with Islam, believing that life and death are determined by Allah, and human beings should not try to interfere or influence the reproductive chain.

As much as the rhetoric of justice and humanitarianism (*insaniyat*) is invoked, the reality is that the permissibility or prohibitive aspects of Islamic laws are determined by whether it is supported or corroborated by Islamic textual sources, not by taking human factors into consideration. There is rarely any effort on the part of Muslim jurists, generally an exclusive male circle, to understand what a woman goes through during each pregnancy or how much overbearing it is for women to have a child almost every year or every other year for so many times during the years of active reproductivity.

Some of the results or effects are all too well known by the world. So many pregnancies take a heavy toll on the health of women as well as the children, because mothers can't physically and emotionally attend to a bunch of children, especially in an environment where child-bearing and child-rearing are left almost exclusively with the women. Many families can't come out of poverty because of large families. In many cases, infant mortality rate is high because quality of life can't be meaningful with too many children, where even basic needs can't be adequately met.

It should be pointed out that in Islamic jurisprudence there are certain principles that allow adjustments even to pronouncements in sacred textual sources: *maslahat* (public interest), *istihsan* (juristic preference), *darurah* (necessity), etc.²⁵ Each of these secondary methodologies have provided some dynamism to the process of *ijtihad*. Yet, even with these additional tools, the Islamic law and jurisprudence remained essentially "micro-juristic". Moreover, for a way of life that is considered comprehensive, the toolkit to deal with all the problems and challenges of life effectively and dynamically remains too narrow.

AbuSulayman, in his book *Crisis of the Muslim Mind* aptly points out:

"Since the methodology of Islamic thought is distinguished by the comprehensiveness of its scope of application, it needs also to be distinguished by the comprehensiveness of its means. Life, in all its aspects, is the field of application for Muslims. In it they are obliged to understand, to seek knowledge, and to strive with every means at their disposal to direct the affairs of their lives toward their goals. Among the sound means of acquiring knowledge and understanding there are none that Muslims are to ignore, whether these be material, semantic, artistic, scientific, empirical, rational, quantitative, qualitative, theoretical, or analytical."²⁶

²⁵AbdulHamid A. AbuSulayman. [Crisis in the Muslim Mind](#) [Herndon, Virginia: The International Institute of Islamic Thought, 1993; this book is available online]. Both Hanafi and Maliki school recognize the validity of *istihsan*. However, they differ in terms of the scope and nature of the notion. Muhammad Abu Zahrah. *The Fundamental Principles of Imam Malik's Fiqh* [online archive; http://www.iiu.edu.my/deed/lawbase/maliki_fiqh/usul8.html]

²⁶ AbuSulayman, *op.cit.* [Chapter Three](#).

Unfortunately, not mandated by divine guidance, but by choice of its human practitioners, Islamic law and jurisprudence is boxed in its toolbox that is too narrow and non-comprehensive to deal with life in its comprehensiveness. Indeed, most of the methods mentioned above by AbuSulayman is not even part of the fiqh's vocabulary.

For example, in regard to this issue of birth control, according to the traditional religious establishment, birth and sustenance belong to the domain of God. We as human beings should not interfere, and birth control or population policies are a form of unacceptable and irreligious intervention. Without doing any real-life-oriented research, the legal rulings and prescriptions and proscriptions are deduced in a text-oriented manner, where the arguments become asynchronous not just with the realities of life, but also such arguments contradict some of the important teachings of the Qur'an.

First, Allah doesn't want people to marry unless they can support a family. Such people are still commanded to remain chaste until Allah makes them financially capable. "Let those who find not the wherewithal for marriage keep themselves chaste..." [24/an-Noor/33] However, the traditional viewpoint against any plan or effort to keep the family size reasonable, in connection with the family's ability to provide, is tantamount to saying that Allah has placed no responsibility on our wisdom, common sense or conscience in regard to our unbridled reproduction. It is like saying that we have no responsibility whether we are able to provide even the basic minimum for our children.

Secondly, the Qur'an sets the norm that mothers will nurse their babies for two full years. "The mothers shall give such to their offspring for two whole years, if the father desires to complete the term." [2/al-Baqarah/233] The physical and emotional benefit of such nursing for the baby is indisputable. However, if a mother is supposed to nurse a baby for two years, shouldn't pregnancies be at least two years apart?

Of course, these are again text-oriented arguments and evidence and illustrative of the fact that even in being text-oriented, there are some serious lapses in certain aspects of traditional Islamic positions. Indeed, there seems to be fundamental confusion regarding the sources of Islamic knowledge and the pertinent research methods and tools.

Historically, Muslims wasted a great deal of energy when they began to discuss matters of the unseen, theology, and philosophical sophistries having to do with issues like the divine predicates. ... It is important that, in this study of Islamic methodology, we should not confuse the sources of Islamic knowledge, which are *wahy*, reason, and the natural laws of the universe, with the means for conducting research and study. Every scientific field has its own means which are particularly suited to it. Clearly, the Islamic disciplines must be based on *wahy*, reason, and the laws and standards that Allah has imposed on creation. Thus grounded, the new Islamic disciplines will be distinguished by their comprehensiveness and openness to any means capable of producing knowledge beneficial to humankind.²⁷

Unfortunately, research, especially focused on learning about and understanding the social reality, is totally absent from the purview and interest of the Islamic jurists/scholars and the Islamic juristic discourse. That the population explosion is a macro problem for the entire society is hardly understood and recognized by Islamic law. Let alone understanding and acknowledging the macro-micro distinction, there is also no recognition of or sensitivity to the fact that pregnancy, though natural to women, takes a heavy toll on the women/mothers at the micro level. At one level, Muslim jurists need to be sensitive to women's health and other pertinent factors. At another level, they need to

²⁷ AbuSulayman, *op.cit.* [Chapter Three](#).

take into consideration the overall negative effects of explosive population growth on the economy and society, especially in a globally competitive or confrontational environment.

6. Polemics of Islamic economics and finance

If one contemporary field has seen the touch of empiricism, it is the field of Islamic economics and finance, although more disproportionately in finance than in economics. Islamic banking and finance movement has emerged as a noticeable phenomenon in the Muslim-majority countries as well as mainstream finance in the West. The entire movement started with the premise that modern economy and financial system are based on interest, and equating interest with *riba*, interest is regarded prohibited. Therefore, many among the revivalist forces want to see an interest-free economy.

Of course, it would be an understatement to say that the due to the dichotomy between the religious and secular education, our religious jurists and scholars are not adequately familiar with the modern economics and finance. But that does not deter them from issuing *fatwa* (juristic opinions from religious perspective). However, they are helped by a new generation of academics and practitioners from the field of economics and finance. These experts from the respective fields are helping the jurists to better understand the modern realities and processes. These experts are also undertaking pertinent empirical works. However, how is the understanding of these jurists and scholars, who depend on such help and input from the experts from the respective fields? Below I present three illustrations.

a. Dr. Yusuf al-Qaradawi: He is one of leading Islamic jurists and scholars of our contemporary. His thoughts and views have a modernist tone, yet with a deep commitment to Islamic authenticity. He generally holds a moderate position on most issues of our time, and highly respected by the contemporary generation. He is highly sought after for his *fatwa* on various contemporary issues, including economy and finance. He has been the Dean of the Islamic Department at the Faculties of Shariah and Education in Qatar, and is the head of the European Council for Fatwa and Research. His book *The Lawful and the Prohibited in Islam* is very popular among Muslims with contemporary perspective.

In that book, he writes about "The wisdom of prohibiting interest."

"The strict prohibition of interest in Islam is a result of its deep concern for the moral, social, and economic welfare of mankind. Islamic scholars have given sound arguments explaining the wisdom of this prohibition, and recent studies have confirmed their opinions, with some additions and extensions of their arguments."²⁸

Quite interestingly, but not unexpectedly, there is absolutely no reference or information about those "recent studies" that "have confirmed their opinions." He cites not a single work. So, essentially, those who merely respect or revere him are supposed to take in on his word. The claim of a position being "confirmed" through studies is a rather big claim. Yes, Islamic finance is one of those fields that had seen many empirical works. But to claim that the wisdom has been confirmed through studies is a seriously overblown claim.

²⁸ Yusuf al-Qaradawi. *The Lawful and the Prohibited in Islam* [New Delhi, India: Hindustan Publications, undated], p. 265.

Similar comments, without any corroboration, are made routinely in the traditional Islamic discourse. For example, the translator of and commentator on Sahih Muslim, without any background in economics or finance, made the following remarks:

The latest researches in Economics have proved beyond any shadow of doubt that interest is responsible for the economic crisis in the world. With increase in the rate of interest, the margin of profit declines and the investor prefers to lend his money on interest rather than invest it in business and take risk. ... The ever-increasing growth of the interest-ridden economy is a conspiracy of the selfish and heartless moneyed class against other factors of production."²⁹

Once again, similar to the statement by al-Qaradawi, sweeping statements are made about economies that allow interest, but without providing any corroboration.

Yes, there are empirical studies by the proponents of Islamic banking and finance. However, there are two major problems with these religious jurists and scholars in this regard. First, they articulate positions in such an authoritative manner that it leaves hardly any room for alternative positions. There is no disclaimer that let alone *ijma* (consensus) and *qiyas* (analogical reasoning), even hadith offers only speculative or probabilistic knowledge, and thus much of these fatwas are not like divine commandments. Rather, these are human constructs, informed by the Qur'an and Sunnah. Secondly, there is absolutely no acknowledgment of empirical studies that counter the claims like the ones made by al-Qaradawi.

For example, Dr. Syed Nawab Haider Naqvi is a leading Pakistani economist with a PhD from Princeton, former Director, Pakistan Institute of Development Economics, Islamabad (1979-1995), and author of *Ethics and Economics: An Islamic Synthesis*. His empirical research based on Pakistan data and presented in the essay "Islamic Banking: An Evaluation" is quite illuminating.

It has been widely noted by Muslim economists that the rationale (*'illat al-hukm*) of the prohibition of *riba* is not just the mathematical formula per se used to compute it; it is rather the alleged adverse consequences of it on the distribution of income and wealth. This is a correct position to take because, contrary to the Nozickian non-consequentialism (Nozick, 1974), Islam evaluates the correctness (or their opposite) of specific policies in terms of the acceptability of their consequences from the moral, economic, and social points of view. However, such an assertion is essentially a refutable hypothesis, which needs to be examined from the theoretical and empirical points of view.

Here I examine this argument, using Pakistani data, ... The situation in other Muslim countries can be examined likewise. It should be clear that the information given in the table does not unambiguously verify the hypotheses noted above. Instead, it shows that both the profit and interest incomes — as well as all other types of incomes identified in table — accrue more to the rich than to the middle-income and lower- middle-income groups; while the lowest of the low-income group gets nothing of interest and next-to-nothing of profits. The reason is that the initial distribution of income is highly unequal ... Thus those who have more already shall be given even more! The table even makes clear that, relatively speaking, interest income is more important than profit income for the low-income and lower-middle-income groups (in the Rs 1001 to Rs 4000 range)

²⁹ *Sahih Muslim*, trans. Abdul Hamid Siddiqi, Shk. Muhammad Ashraf, 1982, Vol. III, pp. 832, note #2021.

and the reverse is the case for the high-income group (in the Rs 4000 and above range).³⁰

Even though this is based on just one country, the result of Naqvi's research is quite contrary to the popular perception as well as claim. If both profit and interest incomes accrue more to the rich, then focusing exclusively on interest is misplaced. Also, if interest income is more important to the lower income groups and profit (not interest) is more important to the high-income group, then the common and popular claims by the proponents of Islamic economics and finance require much closer scrutiny.

The point is that because they are not familiar with the importance and role of empirical works, the religious jurists and scholars are prone to make unhedged claims, and often without any specific empirical proof, as in the case of al-Qaradawi.³¹

b. Sayyid Abul A'la Maududi (1903-1979): He was one of the most influential Muslim personalities of the 20th century and the founder of Jamaat-e-Islami, an Islamic political party in Pakistan. He is considered one of the pioneers of the global Islamic revivalist movement. He was very influential in the emergence of Islamic finance and banking movement. His book *Sood* (interest), originally in Urdu, made an ardent case for why interest is prohibited in Islam. I have not come across any English translation of it. The excerpts below are from the Bengali translation of the book: *Sood o Adhunik Banking* [Dhaka, Bangladesh: Adhunik Prokashoni, 1987]. His position on meeting the non-profit, public needs of the government is as following:

The third category of debt relates to the public sector. Governments sometimes have to incur public debt, without any profit connection, to meet unexpected contingencies or during a war. In modern economies, such needs are almost universally met through public debt, and, of course, through interest-bearing instruments. However, in an Islamic system, its complete opposite would be possible. As soon as the government would inform the public about such needs, the public and the institutions would spontaneously and instantly donate from their wealth and income to the public treasury. In a system that is interest-free, but also with Zakah system, people would be economically so prosperous that they would be so worry-free that they won't hesitate to offer a portion of their surplus to the government. If the need of the government is still not met, the government can seek loan and the people would be voluntarily willing to offer interest-free loan in large amount. If the need of the government is still not met, the government can take any of the following steps to effectively address the need.

a. The government will use the resources from Zakat and Khums (one-fifth of booties collected from the enemy side in a war).

b. Through a public decree, the government will mandatorily take a percentage of the deposits from the banks as loan. Just as the government has the power and the right to impose draft or conscription for military needs or acquire homes, vehicles and other pertinent articles of the people through requisition, it has the power and authority to impose on the banks such requirement to extend loan to the government.

³⁰ Naqvi_2. "[Islamic Banking: An Evaluation](#)," *IIUM Journal of Economics and Management*, Vol. 8, No. 1, 2000, pp. 41-70.

³¹ For more details about these claims, please see Farooq_6. "[The Riba-Interest Equation and Islam: Reexamination of the Traditional Arguments](#)" [Unpublished; November 2005]

c. The last resort would be to print currencies according to the need of the government. It is tantamount to assuming debt on behalf of the public. However, it would be a means of the last resort. If there is no other way to meet the need of the government, only then this option should be used, because this option involves a long list of negative economic consequences."³²

Such a view of course is sheer utopian. Obviously, the author is still in the pre-medieval mode of *khums* as a source of acquiring public wealth. Unfortunately, even contemporary Muslim scholars don't see *khums* or war-booties as a source of accumulation or acquisition of wealth. Expecting the believers to open up their coffers anytime the government wants may prove utopian. Using Zakat for meeting government needs, especially when even the so-called Islamic governments have been anything but Islamic, such options are utterly naive. Requiring banks to offer interest-free loans to the government would be objected to and scoffed at even by the existing Islamic financial institutions. For the last resort, printing currencies and notes as needed is a simple invitation to economic disaster. Even as the last resort, this should never be an option.

Also, in such thoughts, there is a rejection of *homo economicus*, the Economic man, as assumed in modern economics as a rational and "self-interested" actor. However, if the abovementioned views of Maududi is a reflection of *homo islamicus*, the Islamic man, then there might be serious problems with this construction, because not only that there is no empirical basis to support it yet, but also, Islam itself doesn't reject the self-interest factor, the essence of *homo economicus*.

"Who receives guidance, receives it for his own benefit: who goes astray does so to his own loss ...". [[17/al-Isra/15](#)]

"... And whoever purifies himself does so for the benefit of his own soul ..." [[35/al-Fatir/18](#)]

"Whoever does good, it is for his own soul, and whoever does evil, it is against himself. [[45/al-Jathiya/15](#)]

Thus, it is no wonder that empirically speaking, one of the problems Islamic financial institutions are facing is that "that *Homo Islamicus* keeps acting a lot like *Homo economicus*."³³ That's why while *mudaraba* and *musharaka*, based on the principles of profit-loss- and risk sharing, are claimed to be the modes of transactions that are Islamically most valid and acceptable, the reality is that those are the least in the portfolio of the Islamic financial institutions.³⁴

c. Mufti Muhammad Taqi Usmani: He is regarded highly in the traditional Islamic establishment. He is a recognized expert in the fields of Islamic Jurisprudence, Hadith and Tasawwuf. It is also claimed that he is an expert in economics.³⁵ He was Judge at the Shariah Appellate Bench of the Supreme Court of Pakistan until recently. He is among the shariah experts highly sought by Islamic financial institutions. He is also deputy chairman of the Jeddah based Islamic Fiqh Council, an organ of the Organization of Islamic Conference (OIC).

³² Sayyid Abul A'la Maududi. *Sood o Adhunik Banking* [Dhaka, Bangladesh: Adhunik Prokashoni, 1987], pp. 134-135.

³³ Jerry Useem. "[Banking On Allah: Devout Muslims don't pay or receive interest. So how can their financial system work?](#)" *Fortune*, June 10, 2002.

³⁴ Farooq_6, *Op. Cit.*

³⁵ See [Link](#).

Mufti Usmani does not believe in any time value of money. "[I]n Shariah, there is no concept of time value of money."³⁶ There are many Muslim economists who would flatly disagree with him on this point.

Usmani also asserts: "[T]he instrument of interest has a constant tendency in favour of the rich and against the interests of the common people."³⁷ Of course, all such religious jurists and scholars state their position in an unhedged, authoritative manner. However, as we have already discussed earlier, the empirical study of Naqvi, based on Pakistan data, is inconsistent with these assertions of religious scholars.

Indeed, such jurists/muftis write in an authoritative manner not just about their field, Islamic *fiqh*, but also about economics about which they know and understand little. In the same book, under "The basic difference between capitalist and Islamic economy," Mufti Usmani writes about the Capitalist economy: "Interest, gambling, speculative transactions tend to concentrate wealth in the hands of a few."³⁸ It is difficult even to make any meaningful comment about such sweeping and unsubstantiated polemics. Yes, the developed countries have high concentration of wealth, but relatively much less compared to their counterparts. However, interest, gambling and speculative transactions are not the real or primary reasons for such concentrations of wealth.

Claiming "One of the most important characteristics of Islamic financing is that it is an asset-backed financing,"³⁹ Mufti Usmani makes a bold claim: " ... every financing in an Islamic system **creates** real assets."⁴⁰ If the statement were: "every financing in an Islamic system **involves** real assets," it may have been a more defensible claim or statement. However, if his actual statement is correct, then there won't be any trade financing, which may or may not create real assets. It is an unfortunate reality that the existing IFIs are disproportionately involved in trade-financing, not real sector financing to promote production and development.

According to Mufti Usmani, "The real and ideal instruments of financing in *Shariah* are *musharaka* and *mudaraba*."⁴¹ However, those two profit-loss sharing modes are rarely practiced by the IFIs. Instead, cost-plus financing or *Murabaha* (mostly debt-like instruments) continue to be the mainstay of Islamic banking. In the chapter "The Performance of the Islamic Banks - A Realistic Evaluation" Usmani makes a stunning revelation as he laments:

"This [i.e., Islamic] philosophy cannot be translated into reality unless the use of *musharakah* is expanded by the Islamic banks. It is true that there are practical problems in using the *musharakah* as a mode of financing, especially in the present atmosphere where the Islamic banks are working in isolation, and mostly without the support of their respective governments. The fact, however, remains that the Islamic banks should have advanced towards *musharakah* in gradual phases and should have increased the size of *musharakah* financing. Unfortunately, the Islamic banks have overlooked this basic requirement of Islamic banking and there are no visible efforts to progress towards this

³⁶ Muhammad Taqi Usmani. *An Introduction to Islamic Finance* [The Hague: Kluwer Law International, 2002], p. xvi.

³⁷ Usmani, p. 113.

³⁸ Usmani, p. xiv.

³⁹ Usmani, p. xiv.

⁴⁰ Usmani, p. xvi.

⁴¹ Usmani, p. xv.

transaction even in a gradual manner, even on a selective basis. ... [T]he basic philosophy of Islamic banking seems to be totally neglected."⁴²

He seems to believe that it is merely a matter of expediency, where people are less committed to the divine guidance. However, is it possible that here once again the presumed *homo islamicus* (Islamic man) is behaving like *homo economicus*, simply because the behavioral assumptions underlying *homo islamicus* might be problematic?

Mohammad Hashim Kamali, a contemporary scholar of Islamic jurisprudence, comments about the overwhelming emphasis of IFIs on short-term financing that primarily deals with trade-financing, not production-financing, which is contrary to the stated goals and premises of Islamic economics and finance:

"Short-term financing is largely concerned with the financing of goods already produced, and **not with the creation or increase of production capital or with facilities like factories and plants, infrastructure** etc. Yet it is investment in such facilities that encourages real economic growth. Hence the current emphasis of Islamic banks on short-term financing is not congruent either with the long term objective of the banks or with their social welfare agenda."⁴³

Mufti Usmani further writes: "... interest-based financing does not necessarily create real assets, therefore, the supply of money through the loans advanced by the financial institutions does not normally match with the real goods and services produced in the society, because the loans create artificial money through which the amount of money supply is increased, and sometimes multiplied without creating real assets in the same quantity. This gap between the supply of money and production of real assets creates or fuels inflation."⁴⁴

Unless some benefit of doubt is accorded for poor articulation, there is no acknowledgment or recognition that real shocks - shocks that result from production, technology, etc. - can also cause inflation.

This is the kind of polemics, as discussed above, that is regarded as authoritative Islamic works about banking, finance and economics from theological and legalistic viewpoints. Once again, these views and opinions are presented so authoritatively and in such an unhedged manner, without even acknowledging the need to have such propositions empirically tested or studied. It is no wonder that as zealous and committed as the Iranian people has been to the ethos of Islamic Revolution, the government finally came to realize that such expectations about people that they would donate or abundantly offer interest-free loans to the government as needed is utterly unrealistic (utopian). So, what the Islamic Republic of Iran did is legitimize public bonds based on fixed rate of returns, rationalizing that such public borrowing is not covered by the prohibition of *riba*. A country that has publicly and officially committed itself to interest-free economy and banking, "has decreed that government borrowing on the basis of a fixed rate of return from the nationalized banking system would not amount to interest and would hence be permissible."⁴⁵

Lest it is misunderstood, the above articulation is not to suggest that there are no problems with interest. High interest rates, erratic interest rate fluctuations, variable rate

⁴² Usmani, p. 113; emphasis is mine.

⁴³ Mohammad Hashim Kamali. p. 104.

⁴⁴ Usmani, Op Cit., p. xvi.

⁴⁵ Mohamed Ariff. "[Islamic Banking](#)," *Asian-Pacific Economic Literature*, Vol. 2, No. 2 (September 1988), pp. 46-62.

transactions, credit-dependent life-styles, etc. can have serious long-term implications. However, economists generally do not attribute these problems to interest itself.

III. Some Contemporary Thoughts and Reflections

Balancing text-orientation with life-orientation requires that we explore, understand and determine social realities, processes and changes in a meaningful way. One of the most relevant observations in this regard was made by Allama Muhammad Iqbal in his *The Reconstruction of Religious Thoughts in Islam*.

No doubt, the immediate purpose of the Qur'an in this reflective observation of Nature is to awaken in man the consciousness of that of which Nature is regarded a symbol. But the point to note is the general empirical attitude of the Qur'an which engendered in its followers a feeling of reverence for the actual and ultimately made them the founders of modern science. It was a great point to awaken the empirical spirit in an age which renounced the visible as of no value in men's search after God.⁴⁶

Iqbal was referring to the empirical attitude particularly in the context of science. However, notably, he also mentions about "the general empirical attitude." Even though the definitive way of knowing about the higher truths is through divine revelation (i.e., what God wants to communicate to us), Iqbal also has acknowledged the role of human effort to know God through what he has made available to us as *ayat* (signs) in his creations and revelations. Notably, Iqbal's view had a mystic dimension.

There is no doubt that the treatment of religious experience, as a source of Divine knowledge, is historically prior to the treatment of other regions of human experience for the same purpose. The Qur'an, recognizing that the empirical attitude is an indispensable stage in the spiritual life of humanity, attaches equal importance to all the regions of human experience as yielding knowledge of the Ultimate Reality which reveals its symbols both within and without. [41/al-Fussilat/35; also 51/al-Zariyat/20-21]⁴⁷

Although empirical approach is particularly dominant in physical sciences, Iqbal also points out the role and contribution of Muslims in social sciences. Another word, not only that empirical approach in its proper scope was not unknown or strange to Islam and Muslims, but also Muslims played a pioneering role in its relevant development.

Ibn Hazm, in his 'Scope of Logic,' emphasizes sense-perception as a source of knowledge; and Ibn Taimiyyah in his 'Refutation of Logic', shows that induction is the only form of reliable argument. Thus arose the method of observation and experiment. It was not a merely theoretical affair. Al-Biruni's discovery of what we call reaction-time and al-Kindi's discovery that sensation is proportionate to the stimulus, are instances of its application in psychology.⁴⁸

In a timely and trailblazing book, The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought, Dr. Abdulhamid AbuSulayman, former

⁴⁶ Allama Muhammad Iqbal. *The Reconstruction of Religious Thought in Islam* [India: Kitab Bhavan, 2000]; online; Chapter: [Knowledge and Religious Experience](#).

⁴⁷ Iqbal, online; Chapter: [Knowledge and Religious Experience](#).

⁴⁸ Iqbal, online; Chapter: [The Spirit of Muslim Culture](#).

Rector of Islamic University Malaysia, aptly summarizes this problem associated with the lack of empirical foundation.

"From the very beginning of *usul*, we find Muslim jurists looking upon deduction from the Islamic texts as their main method in acquiring knowledge and in maintaining the social system according to the Shariah, both in internal and in external matters. They called it *usul istinbat al-fiqh* (the sources of deductive jurisprudence). In the physical sciences such as medicine, mathematics, and geography, however, Muslims drew on both, text and reason. They were empirical, experimental and applied both induction and deduction. Social sciences, such as political science, psychology, sociology, and social psychology, were absent basically because of the absence of empiricism and the lack of systematic induction and investigation of man and his social nature and reality. The notable exception was the eighth (fourteenth) century scholar, Ibn Khaldun (1332-1406 C.E.), who marks the real beginning of modern social sciences.

Two main reasons for this uneven classical Muslim growth are worth noting. The first was ... the general satisfaction with the existing social system laid down by the Prophet and strengthened by the religious texts. The second reason seems to be the failure of the ninth century Mu'tazilla movement to deal properly with the question of reason (*'aql*) and revelation (*wahy*) in an Islamic context. As a result, they could not establish a permanent basis for the evolution of a rational philosophy in Islam.

There was a general reaction in the ninth and tenth centuries against the alien Greek philosophy and the Islamically improper position of Mu'tazilla on the relation between reason and revelation. This reaction put an end to the Mu'tazilla experiment and simultaneously brought the demise of empiricism and systematic investigation in the field of Islamic social studies. *Tahafut al-Falasifah* (Refutation of the Philosophers) of al-Ghazali (450-505 A.H.) in the fifth (twelfth) century is a landmark in the battle against rationalism.

This attitude is reflected in the Classical educational program, in which the text was emphasized and not much attention was paid to developing systematic rational knowledge pertaining to law and social structure. This attitude, which does not really conform to the Qur'anic attitude concerning *shahadah* (the humanly comprehensible), was easily accepted by those who were isolated from the passage of changing situation, or were conservative or interested in maintaining the status quo. The result was a lack of proper input and feedback into Muslim social studies and decision-making process, and an absence of even the concept of organized social sciences. For these reasons *siyar*, continued [end p. 77] to be a formalistic field of study rather than a dynamic Islamic empirical study of international relations.

It is not true that jurists, in approaching the Islamic text, proceed only by divine guidance; in the process they have to draw on their acquired understanding and knowledge. No one could really engage in such an activity with a blank mind. Lack of rigorous application of empiricism through both deduction and induction and other methods of scientific research in the field of the social sciences is bound to result in grave errors and misunderstanding. It is mainly under the influence of Western challenges, discoveries and scientific methodology that Muslims have hastily reinterpreted their texts in the face of these new realities. Nevertheless, they have failed to establish serious integrated studies and systematic research in the areas of law and social science. ... At present the

Muslim system of education still lacks originality in this direction and is only a poor imitation of an alien educational system.⁴⁹

Islamic countries need a new framework for Muslim social thought, one that is based on a systematic and objective investigation of the social aspects of human life. Only then is the achievement of a viable modern system of philosophical and moral, Islamic values possible. Together with fulfillment of this need, inductive and deductive methods must be rigorously applied to Muslim social studies. It is not surprising that *ijtihad* (original juristic opinions) ceased by the end of the fourth century A.H. (eleventh century A.C.) because the source material was the same, the method of deduction was the same, and no fresh input and feedback through new and continuous empirical investigations were available in the fields of jurisprudence and social studies. Unless Islamic social sciences and humanities are genuinely established along with its textual bases through empiricism, and unless both induction and deduction are applied in these fields, *ijtihad* must, for all practical purposes, continue to be considered at closed and Muslim thought will lack dynamism and productivity."⁵⁰

There is a growing recognition among Muslims about the importance of empirical works, especially in the arena of social science.

One area of knowledge that has been deeply neglected by Muslims is the arena of social sciences. Except for the Islamization of Knowledge project and the *American Journal of Islamic Social Sciences*, both initiatives launched by American Muslims in early 1980s, there has been very little attempt by Muslims to indigenize social sciences. Social sciences, unlike Islamic sciences, which are essentially normative paradigms, have an empirical focus. Social sciences are more interested in understanding *and describing the world as it is* rather than on *postulating on how it ought to be*. Without being prejudicial about what is more important, we must realize that while medieval Islamic sciences do provide a view of how the world ought to be a thousand years ago they do not equip our jurist-scholars with the training and tools necessary to understand the world as it is. *Ulema's* discourses on how the world ought to be become meaningless and therefore ineffective because they are not grounded in contemporary realities. Very simply, if you do not understand where you are, even if you know where you have to go, you will go nowhere.⁵¹

It is important to note that while empirical approach and research can be a vital complementary tool, there are also abuses of, and exaggerate claims about, it. As Dan Kahan, Elizabeth K. Dollard Professor of Law at Yale University, explains in "Unempirical Claims About Empiricism":

When it comes to anticipating the political effects of empirical social science, those who celebrate such work frequently throw empiricism to the winds. For an example, consider John McGinnis's interesting recent article, "[Age of the Empirical](#)," in Policy Review (No. 137; June & July 2006) (which I discovered at the ever useful [Empirical Legal Studies Blog](#)). "[O]ur future politics is more likely to forge consensus than that of the past, writes McGinnis, "because we are on the cusp of a golden age of social science empiricism that will help bring a

⁴⁹ AbdulHamid A. AbuSulayman. *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought* [Herndon, VA: The International Institute of Islamic Thought, 1987], pp. 76-78

⁵⁰ *ibid.*, p. 81.

⁵¹ Muqtedar Khan. "[The Role of Social Scientists in Muslim Societies](#)," *Islamic Horizon* [May 2004]

greater measure of agreement on the consequences of public policy." This claim itself ignores a wealth of empirical evidence from social psychology, which shows that individuals conform their evaluation of social science data to their morally grounded prior beliefs about disputed policy matters. ... sound empirical information cannot, all by itself, generate factual agreement on the consequences of global warming, gun control, the death penalty, drug distribution, etc. This is certainly not to say either that empirical social science is of no use or that consensus cannot be obtained on such issues.⁵²

Muslims do not need to approach the issue of empiricism from a philosophical viewpoint. Like all "isms", empiricism is also another amazing maze in the domain of human intellectualism. That's why our interest in empirical foundation relates to valuing and benefiting from our experience in all possible sense. However, all the "ism"-oriented groups have their own twist to what they hold dear and in this regard Muslims do not have to embrace empiricism from the perspective of the "skeptics" to whom, empiricism "is a theory which holds that the origin of all knowledge is sense experience."⁵³ Consistent with Islamic perspective, the empirical foundation relevant to us is to be experientially connected to the real world and complementary to the recognized Islamic sources.

IV. Understanding *Sunnatullah* and the importance of inductive/empirical research

A stumbling block for many Muslims in appreciating the relevance of empirical approach and work is the narrow western notion of empiricism ("relying on experience or observation alone"). The conservative Islamic establishment is erroneously suspicious that empiricism, beyond the natural world, is to replace divine revelation and the laws and injunctions contained therein. This is a serious misconception. For example, in case of *hadd*, whether capital punishment is the right thing to do is not a matter of debate. There are certain situations in which capital punishment has been specifically mandated. However, since Islam also consider it centrally important that an innocent person must not be punished for a crime that he has not committed, it is important to recognize that the application of *hudood* is not a divine, but a human process. In some of the countries, such as USA, there are now an increasing number of cases of wrong convictions, where people have been either given life sentences or even capital punishment, but they were innocent. Through the scientific development of in the field of DNA and its application in forensic science, a number of convicts, who were being incarcerated or waiting on the death row, have been set free because of conclusive proof of their innocence. The role of empirical approach has been relevant here. Just because law has convicted does not mean that the human beings have exhausted its efforts in ensuring that an innocent does not get wrongly convicted and punished. This is a good example of how Muslims need to study empirically, as to how Islamic laws are applied. The terrible experience of Hudood law in Pakistan is a stark reminder of how the details of Islamic laws, as formulated by fallible (and sometimes even prejudiced) human beings, and the application of such laws in the hands of the human beings may lead to gross and most unacceptable violation of Islam and the principle of justice.

The first step in solving any problem is that we thoroughly understand the nature and extent of the problem, which requires inductive research and study. In this context, Muslims need to understand not only Sunnah of the Prophet (s), but also *Sunnatullah*.

⁵² Dan Kahan, "[Unempirical Claims About Empiricism](#)," comment at the Blog of Yale University Cultural Cognition Project, 6/27/2006.

⁵³ [The Skeptic's Dictionary](#) [online]

Allah has put in place certain laws (*Sunnatullah*) guiding the natural as well as social processes that according to the Qur'an do not change.⁵⁴

(This was Our) way with the apostles We sent before thee: thou will find no change in **Our ways**. [[17/al-Isra/77](#)].

Understanding *Sunnatullah* requires that we complement our text-oriented approach to Islam with a life-oriented approach. Inductive approach is essential in this regard. For example, centuries of accumulated knowledge of economics now yield a number of principles or laws of economics. This has been possible through a combination of deductive and inductive methods. The field of economics, like in other social sciences, advanced through searches for some parallels to natural laws applicable to societies. This of course pertains to "positive economics" - the aspect of economics dealing with understanding of how an economy works. Proposed hypotheses have been subject to empirical studies over a long period of time. Those hypotheses that have stood the empirical tests of time are now recognized and utilized as laws of economics. Economic solutions require better understanding of the economic problems. The laws of economics are not perfect predictors of human behavior, as those are subject to the wide range of *ceteris paribus*, other things remaining unchanged. Yet, with all their imperfections, these laws pertaining to the behavior of *homo economicus* have been very useful for better addressing economic problems.⁵⁵

The notion of *Sunnatullah* can be the guide for Muslims to seek such understanding of laws or processes underlying many of the problems or phenomenon we encounter. For example, contemporary legalists and literalists believe in the *riba*-interest equation.⁵⁶ Since *riba* is categorically prohibited in the Qur'an, the equation extends the prohibition to interest. However, one of the rationales given for such prohibition is that interest is exploitative and unjust, while profit is not. However, as documented in Farooq_6, a closer examination shows that the traditional arguments for the *riba*-interest equations empirically do not hold.

We have already cited the study of Naqvi earlier in this essay, whose empirical study of Pakistan disputes some of the widely made claims about expected improvement in distribution of income and wealth according to Islamic economics. Noting that his study, with its limited scope, is neither conclusive nor final, Naqvi emphasized the compelling need for further empirical works.

"... our objective has been only to take the first decisive step in the direction of thinking out afresh the basis Islamic philosophy of man's economic behaviour and providing answers to a few difficult problems, without any pretensions about these answers being the only possible ones. ... The crucial point of our analysis has been that, instead of an *ad hoc* approach, an 'objective' principle of selection that also satisfies the binding ethical constraints of an Islamic economy should be made the basis of valid economic propositions. A fuller development of this new subject will require an active two-way interaction between abstract theorizing and empirical verifications of the basic hypotheses."⁵⁷

⁵⁴ Mohammad Omar Farooq_7. "[Development Demystified: An Islamic Perspective](#)," A paper presented at the First Conference of NAAMPS, April 9-11, 1993, Chicago, Illinois.

⁵⁵ Of course, rarely there are solutions without side effects, and economic laws are not exceptions.

⁵⁶ Farooq_6, *Op. Cit.*

⁵⁷ Syed Nawab Haider Naqvi_1. *Ethics and Economics: An Islamic Synthesis* [U.K.: The Islamic Foundation, 1981]. , p. 158.

In his typical cautious tone, Naqvi questions the tendency of the advocates of Islamic economics and finance to hold some assertions about the *riba*-interest equation and the relative merit of PLS as "absolute truths".

"The theory of Islamic banking is wedged in between two connected logical statements: (i) that *riba* is equivalent to all interest-based financial transactions, including bank interest, in modern times; and (ii) that profit-based banking—to be more accurate, a banking system raised on the principle of universal PLS [i.e., profit-loss sharing] and unsupported by any guarantee about the return on bank deposits or bank advances — is superior to the capitalistic interest-based banking. Both these assertions, although (incorrectly) regarded by most Muslim thinkers as absolute truths unconstrained by space and time, do raise difficult theoretical and empirical questions and there are no easy answers to them."⁵⁸

As Naqvi raises "difficult theoretical and empirical questions," it is important to note that Islamic economics and finance seem to be more (or even exclusively) focused on the normative aspects, without laying or developing the relevant positive foundation toward understanding the "what is" of economic behavior of human beings. Of course, too quickly *homo economicus* (the economic man), a construct of modern economics, is dismissed in favor a new construct, *homo islamicus*. However, the former is based on positive studies and understanding of human behavior, while the latter is based on normative premises. From the perspective of *sunnatullah*, there is a vital need for both theoretical and empirical studies to better understand the human behavior that is natural (as identified in the Qur'an and observed in the real world) than the behavior that we would like to see as the ideal.⁵⁹

Fortunately, though long forgotten by Muslims themselves, such theoretical and empirical approach is not new in the history of Muslims. In some respects, Muslims have at least partially pioneered the field. Ibn Khaldun [d. 808 AH] is recognized by the modern West as the father of sociology and sciences of history. Muslims gradually were more enamored by theology and law, and they virtually abandoned the legacy of Ibn Khaldun in the field of sociology. In the estimation of the world renowned historian Arnold Toynbee:

... in the Prolegomena (*Muqaddimat*) to his *Universal History* he has conceived and formulated a philosophy of history which is undoubtedly the greatest work of its kind that has ever yet been created by any mind in any time or place. ...

the thought which had been set in motion in Ibn Khaldun's mind by his apprehension of the ruin which the Nomads had brought upon the Maghrib did not come to a standstill here. It moved on, with a gathering momentum, to contemplate the contrast between the Nomadic and the sedentary way of life and to analyze the nature of each; to ponder over the group-feeling or sense of social solidarity or *esprit de corps* (*'asabiyah*) which is the Nomad's psychological response to the challenge of life in the desert; to trace out a connexion of cause and effect between *esprit de corps* and empire-building and between empire-building and religious propaganda; and thence to broaden out until at last it

⁵⁸ Naqvi_2, *Op. Cit.*

⁵⁹ Mohammad Omar Farooq_8. "[Self-Interest, Homo Islamicus and Some Behavioral Assumptions in Islamic Economics and Finance](#)," unpublished essay [September 2006]; also see Timur Kuran. "[Why the Middle East Is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation](#)," *Journal of Economic Perspectives*, 18 (Summer 2004): 71-90; Nadwa Mossaad. "[The Impact of Islam on Economic Growth: Evidence From Cross Country Regressions](#)," paper presented at the Association for the Study of Religion, Economics, and Culture, November 4, 2005.

embraced, in a panoramic vision, the rises and falls of empires and the geneses and growths and breakdowns and disintegrations of civilizations⁶⁰

The contribution of Ibn Khaldun is exactly the kind of theoretical studies in the positive tradition relevant to better understand *sunnatullah*. Ibn Khaldun himself acknowledged how he was guided and inspired by Islam in this regard.

When our discussion in the section on royal authority and dynasties has been studied and due critical attention given to it, it will be found to constitute an exhaustive, very clear, fully substantiated interpretation and detailed exposition of these sentences. We became aware of these things with God's help and without the instruction of Aristotle or the teaching of the Mobedhan (note: a Zoroastrian source)." [Muqaddimah, p. 41]

"We, on the other hand, were inspired by God. He led us to a science whose truth we ruthlessly set forth. If I have succeeded in presenting the problems of this science exhaustively and in showing how it differs in its various aspects and characteristics from all other crafts. This is due to divine guidance. If, on the other hand, I have omitted some point, or if the problems have got confused with something else, the task of correcting remains for the discerning critic, but the merit is mine since I cleared and marked the way. 'God guides with his light whom He will'" [al-Qur'an/16/68] [Muqaddimah, p. 42]⁶¹

Another notable Islamic scholar, contemporary of Ibn Khaldun and preceding him by just a few years, was al-Shatibi [d. 790 AH]. He was also among a few who explicitly articulated the need for and emphasized the use of inductive methods, to complement the deductive method used in the traditional Islamic discourse. Of course, he himself incorporated the inductive method in his works.

"Abu Ishaq al-Shatibi (d. 1388), in his book *Al-Muwafaqat fi-usul al-Shari'a* ('A synthesis of the principles of Shari'a') developed a philosophy of Shari'a focusing on the purpose of law. Contrary to the hitherto prevalent deductive method that used analogical reasoning, Shatibi employed an inductive approach. He insisted that the universal principles must be inferred by an inductive analysis of all the verses of the Qur'an, rather than by deducting rules from selected verses. He concluded that the main objective of Shari'a was the protection of human interest (*maslaha*), articulated in the following five basic areas: person (self), reason, religion, family, and property."⁶²

Unfortunately, incorporating the inductive method, as part of the complete methodological kit of Islamic discourse, as well as approaching *ijtihad* from the perspective of philosophy of shariah or *maqasid al-shariah* remained neglected by the traditional Islamic discourse, including the field of *fiqh*. Had the legacy of Shatibi and Khaldun been taken to its logical conclusion and its relevant potential was properly explored and developed in understanding *sunnatullah* and more, the trajectory of the history of the Muslim society and the humanity might have been remarkably different.

⁶⁰ [Excerpts](#) from *A Study of History* (Vol. 3): *The Growths of Civilizations* (New York: Oxford University Press, 1962), pp. 321-328

⁶¹ Franz Rosenthal and abridged by N. J. Dawood, Princeton University Press, 1970.

⁶² Muhammad Khalid Masud. "Communicative Action and the Social Construction of Shari'a in Pakistan," in Armando Salvatore and Mark Le Vine (eds.). *Religion, Social Practice, and Contested hegemonies: Reconstructing the Public Sphere in Muslim Majority Societies* [New York: Palgrave-Macmillan, 2005], chapter 6, online p. 10. Also, read Muhammad Khalid Masud. *Shatibi's Philosophy of Islamic Law* [India: Kitab Bhavan, 1997]

It is no surprise that the subsequent emergence of the Western civilization did not emerge from burying heads into sacred texts, such as Bible, and limiting the interaction with the sacred texts at the level of deduction. Instead, inductive method was developed fully to utilize not only in the field of science, but also in social sciences from the perspective of natural laws. This was duly supplemented with empirical approach. Of course, historically, the renaissance came about through a revolt against the text-oriented domination of the religious institutions, and therefore ultimately religion was predictably marginalized. On the other hand, inductive/empirical perspective of Ibn Khaldun, al-Shatibi, etc. were not through a revolt against sacred texts, but in reality to better understand the meaning, significance and relevance of the “intent” [*maqasid*] of *shariah*. Of course, from such a perspective, *shariah* is not to be equated to laws in a reductionist and legalistic manner.

V. Conclusion

It is such empirical foundation that is critically needed to render Islamic laws again balanced in the sense that the text-orientation is duly matched by life-orientation. Several steps are needed in this regard.

1. Many social problems require sensitivity at the human level. Those who formulate Islamic laws - and the process of formulation needs to be reexamined as well - should be duly sensitized to human issues by research as well as project level works to better and systematically know and understand the problem they are trying to address.
2. Curriculum of religious institutions of higher learning should have research components that can help expose the students and educators to understanding the nature and extent of the problems about which they have to provide religious guidance. In this regard, there has to be education about problem-solving approach and perspective. At higher levels of studies, parallel to modern education, there must be comparable research components, which should also include some empirical method. Each undergraduate student should be required to do a study involving a particular case and submit project report as part of the degree. For example, a student can interview a number of women in an area to learn about their experience with the inheritance laws. A student can shadow for a week the daily life of a woman with 3+ young children and note/share the relevant experience and lessons, if any.
3. Before formulating any law, the religious jurists and scholars should either make effort on their own, or draw on the expertise of the relevant researchers to understand and learn about the problem in question.
4. Since human fallibility must be taken into consideration, except a few things that are explicitly legislated in the Qur'an, all laws and codes must be treated as tentative, because our knowledge at the level of details are only probabilistic.⁶³
5. After formulating or enacting laws/codes, there must be ex-post study of the effects and consequences of the laws.

⁶³ Farooq_1, *op cit.*.

6. Women must be integrated into the religious discourse at all levels, including the level of *ijtihad*.⁶⁴

Islam is based on human nature (*fitrah*). "Every person is born on the FITRAH." [al-Bukhari, Vol. 2, Book 23, Number 441] Thus, it is important that we have better understanding about that nature in seeking and providing guidance and solution. Such pursuit of understanding the nature can't be all deductive - merely turning to texts. Life-oriented, research and empirical works, using inductive methodology, is also indispensable.

The above suggestions can be helpful in making Islamic guidance effective and dynamic again in our own time. It can also help to bridge the gap between the objectives (*maqasid*) of the Islamic guidance and laws that are sometime ineffective and at other times contrary to the stated intents.

⁶⁴ Mohammad Omar Farooq_9. "[Women Scholars of Islam: They Must Bloom Again](#)," Message International [August-September 2003]

